

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CIENA CORPORATION, a Delaware
corporation,

Plaintiff,

v.

NORTEL NETWORKS INC., a Delaware
corporation, NORTEL NETWORKS LIMITED,
a Canadian corporation, and NORTEL
NETWORKS CORPORATION, a Canadian
corporation,

Defendants.

Civil Action No. 2:05-CV-14-LED

Judge Davis

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

Plaintiff, Ciena Corporation (“Ciena”), as and for its Second Amended Complaint For Patent Infringement against defendants Nortel Networks Inc., Nortel Networks Limited, and Nortel Networks Corporation (collectively “Nortel”), alleges as follows:

JURISDICTION AND VENUE

1. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has jurisdiction over Plaintiff’s federal law claims under 28 U.S.C. §§ 1331 and 1338(a)-(b).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because defendants reside in and have committed substantial acts of infringement in this

SECOND AMENDED COMPLAINT

District, including making, using, offering to sell and/or importing products covered by and/or whose use induces or contributes to the infringement of certain patents owned by Ciena.

PARTIES

3. Ciena is a Delaware corporation doing business in this judicial district and elsewhere.

4. Nortel Networks Inc. is a Delaware corporation doing business and committing acts of infringement in this judicial district and elsewhere.

5. Nortel Networks Limited is a Canadian corporation doing business and committing acts of infringement in this judicial district and elsewhere.

6. Nortel Networks Corporation is a Canadian corporation doing business and committing acts of infringement in this judicial district and elsewhere.

FACTUAL BACKGROUND

7. Ciena is the owner of certain patents issued by the United States Patent & Trademark Office covering communications networking technology.

8. Specifically, Ciena is the exclusive owner of all right, title and interest in the following patents: No. 5,715,076, No. 6,163,392, No. 6,278,535, No. 6,324,165, No. 5,999,532, No. 6,389,019, and No. 6,104,698 (collectively, the “Ciena Patents”).

9. Nortel and Ciena both sell communications networking products, and Nortel has been infringing the Ciena Patents in order to compete against Ciena’s product lines.

10. Ciena brings this action in order to enjoin Nortel’s infringing activities and recover all damages caused by its infringement.

SECOND AMENDED COMPLAINT

COUNT I
(Infringement of U.S. Patent No. 5,715,076)

11. The allegations of paragraphs 1-10 above are incorporated herein by reference.

12. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

13. Ciena is the owner of U.S. Patent No. 5,715,076 (“the ‘076 patent”) which was duly and legally issued on February 3, 1998, and is entitled “Remodulating Channel Selectors for WDM Optical Communication Systems.” A true and correct copy of the ‘076 patent is attached hereto as Exhibit 1.

14. Nortel has been and is directly and contributorily infringing the ‘076 patent, and inducing infringement of the ‘076 patent, in this District and elsewhere in the United States, by making, using, selling, offering for sale and/or importing products covered by and/or whose use induces or contributes to the infringement of the ‘076 patent, including but not limited to products such as Nortel’s OPTera LH 1600, Optera Long Haul 1600, OPTera DT, Optera Long Haul DWDM Terminal, Optical DWDM Terminal, Optical Metro 5000 Series (formerly known as the OPTera Metro 5000 Multiservice Platform series) (including but not limited to the OPTera Metro 5100, the Optical Metro 5100, the OPTera Metro 5200, and the Optical Metro 5200), and Common Photonic Layer.

15. Nortel’s acts of infringement are willful.

16. Nortel’s acts of infringement have damaged Ciena in an amount to be proven at trial.

17. Nortel’s acts of infringement have caused irreparable injury to Ciena and Ciena will continue to suffer irreparable injury unless Nortel is enjoined.

SECOND AMENDED COMPLAINT

COUNT II
(Infringement of U.S. Patent No. 6,163,392)

18. The allegations of paragraphs 1-17 above are incorporated herein by reference.

19. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

20. Ciena is the owner of U.S. Patent No. 6,163,392 (“the ‘392 patent”) which was duly and legally issued on December 19, 2000, and is entitled “Distributed Intelligence Wavelength Division Multiplexed Network.” A true and correct copy of the ‘392 patent is attached hereto as Exhibit 2.

21. Nortel has been and is directly and contributorily infringing the ‘392 patent, and inducing infringement of the ‘392 patent, in this District and elsewhere in the United States, by making, using, selling, offering for sale and/or importing products covered by and/or whose use induces or contributes to the infringement of the ‘392 patent, including but not limited to products such as Nortel’s OPTera LH 1600, Optera Long Haul 1600, OPTera DT, Optera Long Haul DWDM Terminal, Optical DWDM Terminal, Optical Metro 5000 Series (formerly known as the OPTera Metro 5000 Multiservice Platform series) (including but not limited to the OPTera Metro 5100, the Optical Metro 5100, the OPTera Metro 5200, and the Optical Metro 5200), and Common Photonic Layer.

22. Nortel’s acts of infringement are willful.

23. Nortel’s acts of infringement have damaged Ciena in an amount to be proven at trial.

SECOND AMENDED COMPLAINT

24. Nortel's acts of infringement have caused irreparable injury to Ciena and Ciena will continue to suffer irreparable injury unless Nortel is enjoined.

COUNT III
(Infringement of U.S. Patent No. 6,278,535)

25. The allegations of paragraphs 1-24 above are incorporated herein by reference.

26. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

27. Ciena is the owner of U.S. Patent No. 6,278,535 ("the '535 patent") which was duly and legally issued on August 21, 2001, and is entitled "SONET J0 Byte Message Monitoring System." A true and correct copy of the '535 patent is attached hereto as Exhibit 3.

28. Nortel has been and is directly and contributorily infringing the '535 patent, and inducing infringement of the '535 patent, in this District and elsewhere in the United States, by making, using, selling, offering for sale and/or importing products covered by and/or whose use induces or contributes to the infringement of the '535 patent, including but not limited to products such as OPTera LH 1600, Optera Long Haul 1600, OPTera DT, Optera Long Haul DWDM Terminal, Optical DWDM Terminal, OPTera Multiservice edge 6500, Optical Multiservice Edge 6500, OPTera Metro 3000/4000/5000 series, Optical Metro 3000/4000/5000 series, OPTera connect HDX/HDXc/Dx/Metro, Optical Cross Connect HDX/HDXc/DX/Metro, Optera Metro Connect and other Nortel SDH/SONET MUXs and ADMs (including next generation SONET/SDH).

29. Nortel's acts of infringement are willful.

30. Nortel's acts of infringement have damaged Ciena in an amount to be

SECOND AMENDED COMPLAINT

proven at trial.

31. Nortel's acts of infringement have caused irreparable injury to Ciena and Ciena will continue to suffer irreparable injury unless Nortel is enjoined.

COUNT IV
(Infringement of U.S. Patent No. 6,324,165)

32. The allegations of paragraphs 1-31 above are incorporated herein by reference.

33. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

34. Ciena is the owner of U.S. Patent No. 6,324,165 ("the '165 patent") which was duly and legally issued on November 27, 2001, and is entitled "Large Capacity, Multiclass Core ATM Switch Architecture." A true and correct copy of the '165 patent is attached hereto as Exhibit 4.

35. Nortel has been and is directly and contributorily infringing the '165 patent, and inducing infringement of the '165 patent, in this District and elsewhere in the United States, by making, using, selling, offering for sale and/or importing products covered by and/or whose use induces or contributes to the infringement of the '165 patent, including but not limited to Passport 7000 series, Multiservice Switch 7400 series, Passport 15000 series, Passport 20000 series, and Multiservice Switch 15000/20000 series.

36. Nortel's acts of infringement are willful.

37. Nortel's acts of infringement have damaged Ciena in an amount to be proven at trial.

38. Nortel's acts of infringement have caused irreparable injury to Ciena and

SECOND AMENDED COMPLAINT

Ciena will continue to suffer irreparable injury unless Nortel is enjoined.

COUNT V
(Infringement of U.S. Patent No. 5,999,532)

39. The allegations of paragraphs 1-38 above are incorporated herein by reference.

40. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

41. Ciena is the owner of U.S. Patent No. 5,999,532 (“the ‘532 patent”) which was duly and legally issued on December 7, 1999, and is entitled “ATM Line Concentration Apparatus.” A true and correct copy of the ‘532 patent is attached hereto as Exhibit 5.

42. Nortel has been and is directly and contributorily infringing the ‘532 patent, and inducing infringement of the ‘532 patent, in this District and elsewhere in the United States, by making, using, selling, offering for sale and/or importing products covered by and/or whose use induces or contributes to the infringement of the ‘532 patent, including but not limited to Passport 7000 series, Multiservice Switch 7400 series, Passport 15000 series, Passport 20000 series, and Multiservice Switch 15000/20000 series.

43. Nortel’s acts of infringement are willful.

44. Nortel’s acts of infringement have damaged Ciena in an amount to be proven at trial.

45. Nortel’s acts of infringement have caused irreparable injury to Ciena and Ciena will continue to suffer irreparable injury unless Nortel is enjoined.

COUNT VI
(Infringement of U.S. Patent No. 6,389,019)

SECOND AMENDED COMPLAINT

46. The allegations of paragraphs 1-45 above are incorporated herein by reference.

47. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

48. Ciena is the owner of U.S. Patent No. 6,389,019 (“the ‘019 patent”) which was duly and legally issued on May 14, 2002, and is entitled “Time-Based Scheduler Architecture and Method for ATM Networks.” A true and correct copy of the ‘019 patent is attached hereto as Exhibit 6.

49. Nortel has been and is directly and contributorily infringing the ‘019 patent, and inducing infringement of the ‘019 patent, in this District and elsewhere in the United States, by making, using, selling, offering for sale and/or importing products covered by and/or whose use induces or contributes to the infringement of the ‘019 patent, including but not limited to Passport 7000 series, Multiservice Switch 7400 series, Passport 15000 series, Passport 20000 series, and Multiservice Switch 15000/20000 series.

50. Nortel’s acts of infringement are willful.

51. Nortel’s acts of infringement have damaged Ciena in an amount to be proven at trial.

52. Nortel’s acts of infringement have caused irreparable injury to Ciena and Ciena will continue to suffer irreparable injury unless Nortel is enjoined.

COUNT VII
(Infringement of U.S. Patent No. 6,104,698)

53. The allegations of paragraphs 1-52 above are incorporated herein by reference.

SECOND AMENDED COMPLAINT

54. This claim arises under the patent laws of the United States,
35 U.S.C. § 1 *et seq.*

55. Ciena is the owner of U.S. Patent No. 6,104,698 (“the ‘698 patent”) which was duly and legally issued on August 15, 2000, and is entitled “Asynchronous Transfer Mode Exchange System and Priority Control Method.” A true and correct copy of the ‘698 patent is attached hereto as Exhibit 7.

56. Nortel has been and is directly and contributorily infringing the ‘698 patent, and inducing infringement of the ‘698 patent, in this District and elsewhere in the United States, by making, using, selling, offering for sale and/or importing products covered by and/or whose use induces or contributes to the infringement of the ‘698 patent, including but not limited to Passport 7000 series, Multiservice Switch 7400 series, Passport 15000 series, Passport 20000 series, and Multiservice Switch 15000/20000 series.

57. Nortel’s acts of infringement are willful.

58. Nortel’s acts of infringement have damaged Ciena in an amount to be proven at trial.

59. Nortel’s acts of infringement have caused irreparable injury to Ciena and Ciena will continue to suffer irreparable injury unless Nortel is enjoined.

PRAYER

WHEREFORE, Ciena prays that the Court:

A. Enter judgment that Nortel has infringed, contributorily infringed, and induced infringement of the Ciena Patents;

SECOND AMENDED COMPLAINT

B. Enter judgment that Nortel's acts of infringement, contributory infringement, and inducing infringement have been and are willful;

C. Temporarily, preliminarily and permanently enjoin Nortel, their parents, subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives and all parties in active concert and/or participation with them, from engaging in the aforesaid unlawful acts of infringement, contributory infringement and/or inducing infringement;

D. Order Nortel to account for and pay to Ciena all damages caused to Ciena by Nortel's infringement, contributory infringement and/or inducement of infringement, pursuant to 35 U.S.C. § 284, and award Ciena any and all other compensatory damages available by law;

E. Award Ciena increased damages and attorneys' fees pursuant to 35 U.S.C. §§ 284-285;

F. Award Ciena prejudgment and postjudgment interest and its costs incurred in this action; and

G. Grant Ciena such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Ciena demands a jury trial of all issues triable of right by jury.

Respectfully submitted,

DATED: March 4, 2005

By: _____/s/_____

Gregory L. Lippetz, with permission
CA State Bar No. 154228
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, California 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2286

Calvin Capshaw
State Bar No. 03783900
BROWN McCARROLL LLP
1127 Judson Road, Suite 220
Longview, TX 75601-5157
Telephone: (903) 236-9800
Facsimile: (903) 236-8787
Attorney in Charge

OF COUNSEL:

FABIO E. MARINO
BINGHAM McCUTCHEN LLP
1900 University Avenue
East Palo Alto, California 94303-2223
Telephone: (650) 849-4400
Facsimile: (650) 849-4800

Attorneys for Plaintiff
CIENA CORPORATION

SECOND AMENDED COMPLAINT